UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte SYED M. ALI, PETER A. YARED,
BRUCE K. DANIELS, ROBERT N. GOLDBERG, and
YURY KAMEN

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Appeal 2007-2997
Application 09/997,927[1]
Technology Center 2100

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Decided: March 5, 2008

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Before JOSEPH L. DIXON, JAY P. LUCAS, and
ST. JOHN COURTENAY III, *Administrative Patent Judges.*

LUCAS, *Administrative Patent Judge.*

DECISION ON APPEAL

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[1] Application filed 11/30/01. The real party in interest is Sun Microsystems, Inc.

STATEMENT OF CASE

Appellants appeal from a final rejection of claims 2 to 8, 10 to 24, 31,

and 32 under authority of 35 U.S.C. § 134. The Board of Patent Appeals and

Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

Appellants' invention relates to a method in a client-server system for

communicating calls from programming segments within a client to remote

objects in the server in a more efficient manner. In the words of the

Appellants:

> In general, in one aspect, the invention relates to a
> method for transparently injecting a proxy into a distributed
> application having a server portion and a client portion
> which comprises analyzing the server portion to find each
> remote object in the server portion. The method further
> includes creating the proxy for each remote object in the
> server portion and including the proxy in a runtime library. The
> method further includes analyzing the client portion to
> determine calls made to remote objects in the server portion and
> replacing calls for remote objects with calls for a corresponding
> proxy. The method further includes interposing the runtime
> library between the client portion and the server portion.

(Specification 4).

Claim 8 is exemplary:

8.   A method for transparently injecting proxies into a distributed
       application having a server portion and a client portion, comprising:

       creating a proxy for each of a plurality of remote objects in the server
              portion, each proxy implementing an interface of a
              corresponding remote object and having a capability to cache
              data from the corresponding remote object;

modifying the client portion to substitute a call for a remote object with a call for a corresponding proxy; and

interposing a runtime that includes the proxy for each of the plurality of remote objects between the client portion and the server portion,

wherein creating the proxy for each of the plurality of remote objects in the server portion comprises analyzing the server portion to determine each of the plurality the remote objects in the server portion.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Glass	US 6,629,128 B1	Sep. 30, 2003

Rejection:

Claims 2 to 8, 10 to 24, 31 and 32 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Glass.

Groups of Claims:

Group I: Claims 2 to 8, 11 to 14, 16 to 24 and 32, with claim 8 representative;

Group II: Claim 31

Group III: Claim 10

Group IV: Claim 15

Appellants contend that the claimed subject matter is not anticipated by Glass for failure of Glass to teach the claimed limitations. The Examiner contends that each of the four groups of claims is properly rejected.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Briefs and the Answer for their respective details.

Only those arguments actually made by Appellants have been considered in this opinion. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).[2]

We affirm the rejection.

ISSUE

The issue is whether Appellants have shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 102(e). The issue turns on whether each limitation in the claims is to be found in the Glass reference.

PRINCIPLES OF LAW

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

Both anticipation under 35 U.S.C. § 102 and obviousness under § 103 are two-step inquiries, in which the first step is a proper construction of the claims, and the second step requires a comparison of the properly construed claim to the prior art. *Medichem S.A. v. Rolabo S.L.*, 353 F.3d 928, 933 (Fed. Cir. 2003).

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[2] Appellants have not presented any substantive arguments directed separately to the patentability of the dependent claims or related claims in each group, except as will be noted in this opinion. In the absence of a separate argument with respect to those claims, they stand or fall with the representative independent claim. *See In re Young*, 927 F.2d 588, 590 (Fed. Cir. 1991).

Our reviewing court states in *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989) that "claims must be interpreted as broadly as their terms reasonably allow." Our reviewing court further states that "the words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal citations omitted). The "ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Id.* at 1313.

ANALYSIS

From our review of the administrative record, we find that the Examiner has presented a prima facie case for the rejection of Appellants' claims under 35 U.S.C. § 102(e). The prima facie case is presented on pages 3 to 7 of the Examiner's Answer.

Group I: Claim 8 representative

In opposition to the prima facie case, Appellants present two main arguments concerning this group of claims. The first argument addresses whether the wording of claim 8 requires that **all** of the remote objects in the server to have proxies (Brief 8).

In relevant part, claim 8 reads, "creating a proxy for each of a plurality of remote objects in the server portion . . ." Later in claim 8, we read "wherein creating the proxy for each of the plurality of remote objects in the server portion comprises analyzing . . ." As the Examiner has realized, a fair but broad interpretation of a plurality of remote objects, in accordance with the common meaning, is not a totality of the remote objects.

(*See Phillips v. AWH Corp.*, cited above.) It need not even be a majority of the remote objects. It is merely a grouping of more than one remote object. True, the claim requires a proxy for every one ("each") of the remote objects in the plurality, but that does not require that every remote object in the server portion have a proxy assigned to it. In Glass, the proxies are assigned to classes of remote objects, as they are needed (col. 7, lines 50 *et seq.*). They are assigned to each of a plurality of remote objects, namely those objects in the class. We find this to be a fair reading of the Glass reference.

Appellants then argue (Brief 9, bottom; Reply 6, middle) that though Glass may "generate[s] remote proxy **22** on client system **14**" (col. 8, l. 4), there is no *explicit* teaching of modifying the client to use them (Reply 6, middle). We have considered this argument and find it unpersuasive. Glass certainly teaches using the new client side proxies, which inherently means that he modifies the calls to address them (*see* Glass, fig. 7; col. 7, l. 40).

We do not find that the Appellants have shown error in the Examiner's prima facie case of anticipation.

Group II, Claim 31

Appellants repeat the argument concerning the interpretation of "each remote object" discussed above. Similarly, we do not find error in the rejection of this claim for the reasons cited above.

Group III, Claim 10

Claim 10 requires parsing machine code. Appellants indicate that Glass teaches only the parsing of byte code, and alleges that in the claim they are not equivalent (Brief 13, first para.). We do not find this argument persuasive for the reasons cited by the Examiner, (Answer 8, bottom), but

even more so because of the Appellants' own admission in ¶ [0025], namely: "this process would involve parsing the machine code (bytecode) or source code for the client program **16** . . ." (Specification 7). This passage from the Appellants' specification supports the reasonableness in the Examiner's interpretation of the equivalence of the term in this context.

We do not find error in the rejection.

Group IV, Claim 15

We do not find error in the rejection for the reasons stated by the Examiner (Answer 9).

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner did not err in rejecting the claims on appeal.

DECISION

The Examiner's rejection of claims 2 to 8, 10 to 24, 31, and 32 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

clj

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